

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF KEVIN J. POST IN
SUPPORT OF DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT

**NOTED ON MOTION CALENDAR:
Friday, May 7, 2012**

DECLARATION OF KEVIN J. POST IN SUPPORT OF
DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

1 I, KEVIN J. POST, declare as follows:

2 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola, Inc.
3 (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation
4 (collectively "Motorola"), Defendants in this action, and am a member in good standing of the
5 bars of the State of New York and the District of Columbia.

6 2. I submit this declaration in support of Defendants' Motion for Partial Summary
7 Judgment, submitted concurrently herewith.

8 3. Attached as Exhibit 1 is a true and correct copy of the transcript of the deposition
9 of K. McNeill Taylor, Jr., which was designated Highly Confidential and taken under oath in New
10 York, NY, on March 20, 2012 (filed under seal).

11 4. Attached as Exhibit 2 is a true and correct copy of selected pages from the
12 transcript of the January 20, 2012 hearing held in *In The Matter of Certain Gaming and*
13 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
14 (U.S.I.T.C.) by ALJ Shaw, which reproduces the confidential sworn testimony given by Kirk W.
15 Dailey and bears non-consecutive production numbers MOTM_WASH1823_0401216-427 (filed
16 under seal).

17 5. Attached as Exhibit 3 is a true and correct copy of the Direct Testimony of Kirk W.
18 Dailey, marked as Hearing Exhibit CX-715C and admitted into evidence in *In The Matter of*
19 *Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv.
20 No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers
21 MOTM_WASH1823_0398478-502 (filed under seal).

22 6. Attached as Exhibit 4 is a true and correct copy of the Rebuttal Testimony of Kirk
23 Dailey, marked as Hearing Exhibit CX-778C and admitted into evidence in *In The Matter of*
24 *Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv.
25 No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers
26 MOTM_WASH1823_0398598-625 (filed under seal).

7. Attached as Exhibit 5 is a true and correct copy of the June 1, 2010 Patent Cross License Agreement entered into between Motorola, Inc. and Research In Motion Ltd., marked as Hearing Exhibit CX-93C and admitted into evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0397002-96 (filed under seal).

8. Attached as Exhibit 6 is a true and correct copy of the Rebuttal Expert Testimony of Dr. David J. Teece, marked as Hearing Exhibit CX-759C and admitted into evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0400260-86 (filed under seal).

9. Attached as Exhibit 7 is a true and correct copy of the article titled "Ballmer Aims to Overcome Mobile Missteps," which was printed from <http://online.wsj.com/article/SB10001424052748703466104575529861668829040.html> on September 22, 2011, bearing production numbers MOTM_WASH1823_0402080-82.

3. Attached as Exhibit 8 is a true and correct copy of an October 21, 2010 letter sent by Kirk Dailey, Motorola's Corporate Vice President of Intellectual Property to Horatio E. Gutierrez, Microsoft Corporation's ("Microsoft") Corporate Vice President and Deputy General Counsel, marked as Hearing Exhibit CX-597 and admitted into evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0398180-201. Attached to the letter is a list of "Motorola Essential Properties, WLAN Annex." The Annex lists 52 United States and 205 foreign patents and patent applications.

10. Attached as Exhibit 9 is a true and correct copy of an October 29, 2010 letter sent by Kirk W. Dailey, Motorola's Corporate Vice President of Intellectual Property, to Horatio E.

1 Gutierrez, Microsoft's Corporate Vice President and Deputy General Counsel, marked as Hearing
 2 Exhibit CX-598 and admitted into evidence in *In The Matter of Certain Gaming and*
 3 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
 4 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0398202-25.
 5 Attached to the letter is a list of "Motorola Essential Properties, ITU-T-H.264." The Annex lists
 6 26 United States and 151 foreign patents and patent applications.

7 11. Attached as Exhibit 10 is a true and correct copy of the Rebuttal Expert Witness
 8 Testimony of Richard J. Holleman, marked as Hearing Exhibit CX-758C and admitted into
 9 evidence in *In The Matter of Certain Gaming and Entertainment Consoles, Related Software, and*
 10 *Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production
 11 numbers MOTM_WASH1823_0400192-207 (filed under seal).

12 12. Attached as Exhibit 11 is a true and correct copy of selected pages from the
 13 transcript of the January 20, 2012 hearing held in *In The Matter of Certain Gaming and*
 14 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
 15 (U.S.I.T.C.) by ALJ Shaw, which reproduces the confidential sworn testimony given by Dr. David
 16 J. Teece and bears non-consecutive production numbers MOTM_WASH1823_0401216-496 (filed
 17 under seal).

18 13. Attached as Exhibit 12 is a true and correct copy of the IEEE-SA Standards Board
 19 Bylaws, which were approved by the IEEE-SA Board of Governors in December 2009, bearing
 20 production numbers MOTM_WASH1823_0054722-41.

21 14. Attached as Exhibit 13 is a true and correct copy of the Guidelines for
 22 Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC, dated March 1, 2007,
 23 bearing production numbers MOTM_WASH1823_0092826-39.

24 15. Attached as Exhibit 14 is a document titled "Understanding Patent Issues During
 25 IEEE Standards Development," by the IEEE-SA Standards Board Patent Committee, Copyright
 26 © 2012, bearing production numbers MOTM_WASH1823_0402083-101.

1 16. Attached as Exhibit 15 is a true and correct copy of a compilation of Patent
2 Statements and Licensing Declarations submitted by Motorola Mobility, Inc., Motorola, Inc. and
3 General Instrument Corp. to the ITU, bearing consecutive production numbers
4 MOTM_WASH1823_0000035-67, 74-77.

5 17. Attached as Exhibit 16 is a true and correct copy of a compilation of Letters of
6 Assurance submitted by Motorola, Inc. and Symbol Technologies, Inc. to the IEEE, bearing
7 consecutive production numbers MOTM_WASH1823_0000001-34.

8 18. Attached as Exhibit 17 is a true and correct copy of selected pages from American
9 Bar Association, Section of Science & Technology Law, Committee on Technical
10 Standardization, *Standard Development Patent Policy Manual* (2007), bearing production
11 numbers MOTM_WASH1823_0054693-99.

12 19. Attached as Exhibit 18 is a true and correct copy of a document titled
13 “Considerations for Developing or Revising PSO IPR Policies,” GSC-13, IPR WG, Agenda Item
14 9, TIA, identified as Document # GSC13-IPR-14r1, dated July 16, 2008, and listing Contact(s) as
15 Kent Baker, Dan Bart and Amy Marasco, which bears production numbers
16 MOTM_WASH1823_0402454-70.

17 20. Attached as Exhibit 19 is a true and correct copy of a document titled “Standards-
18 Setting, IPR Policies and Stakeholder Considerations,” by Amy Marasco, General Manger,
19 Standards Strategy, Microsoft Corporation, bearing production numbers
20 MOTM_WASH1823_0054850-64.

21 21. Attached as Exhibit 20 is a true and correct copy of a June 14, 2011 letter sent by
22 David Heiner, Microsoft’s Vice President and Deputy General Counsel, and Amy Marasco,
23 Microsoft’s General Manager, Standards Strategy and Policy, to the Federal Trade Commission’s
24 Office of the Secretary regarding Patent Standards Workshop, Project No. P11-1204, bearing
25 production numbers MOTM_WASH1823_0053365-81.

1 22. Attached as Exhibit 21 is a true and correct copy of selected pages of the transcript
2 of the testimony given in an FTC Workshop titled “Tools to Prevent Patent Hold-Up,” taken on
3 Tuesday, June 21, 2011, at the Federal Trade Commission Conference Center, 601 New Jersey
4 Avenue, NW, Washington D.C. 20001, bearing non-consecutive production numbers
5 MOTM_WASH1823_0402102-348.

6 23. Attached as Exhibit 22 is a true and correct copy of a document titled “Negotiating
7 Standards-Related Patent Licenses: How the Deal Is Done part I,” by Michele K. Herman,
8 published in Landslide® magazine, Volume 3, Number 1, September/October 2010, bearing
9 production numbers MOTM_WASH1823_0402425-31.

10 24. Attached as Exhibit 23 is a true and correct copy of a document titled “Negotiating
11 Standards-Related Patent Licenses: How the Deal Is Done part II,” by Michele K. Herman,
12 published in Landslide® magazine, Volume 3, Number 2, November/December 2010, bearing
13 production numbers MOTM_WASH1823_0402432-36.

14 25. Attached as Exhibit 24 is a true and correct copy of a document titled “Can
15 Standard-Setting lead to Exploitative Abuse? A Dissonant View of Patent Hold-Up, Royalty
16 Stacking and the Meaning of FRAND,” by Damien Geradin and Miguel Rato, bearing production
17 numbers MOTM_WASH1823_0402369-424.

18 26. Attached as Exhibit 25 is a true and correct copy of a document titled
19 “Standardization and technological innovation: Some reflections on ex-ante licensing, FRAND,
20 and the proper means to reward innovators,” presented to the Conference “Intellectual Property
21 and Competition Law,” Brussels, June 8, 2006, by Damien Geradin, bearing production numbers
22 MOTM_WASH1823_0402437-53.

23 27. Attached as Exhibit 26 is a true and correct copy of a document bearing production
24 number MS-MOTO_1823_00002288984 (filed under seal).

1 I declare under penalty of perjury of the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

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4 DATED this 30th day of March, 2012.

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Kevin J. Post

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.
Christopher T. Wion, Esq.
Shane P. Cramer, Esq.
Danielson, Harrigan, Leyh & Tollefson LLP
arthurh@dhl.com
chrisw@dhl.com
shanec@dhl.com

Brian R. Nester, Esq.
David T. Pritikin, Esq.
Douglas I. Lewis, Esq.
John W. McBride, Esq.
Richard A. Cederoth, Esq.
David Greenfield, Esq.
William H. Baumgartner, Jr., Esq.
David C. Giardina, Esq.
Carter G. Phillips, Esq.
Constantine L. Trela, Jr., Esq.
Ellen S. Robbins, Esq.
Sidley Austin LLP
bnester@sidley.com
dpritikin@sidley.com
dilewis@sidley.com
jwmcbride@sidley.com
rcederoth@sidley.com
david.greenfield@sidley.com
wbaumgartner@sidley.com
dgiardina@sidley.com
cphillips@sidley.com
ctrela@sidley.com
erobbins@sidley.com

T. Andrew Culbert, Esq.
David E. Killough, Esq.
Microsoft Corp.
andycu@microsoft.com
davkill@microsoft.com

DATED this 30th day of March, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley